# UNITED STATES DISTRICT COURT

JAN 0.6 2022

for the

Western District of N.C.

U.S. District Court Western District of N.C.

Statesville Division

Case No.

5-22-cv-3-MR

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional

officer Xayavong

page with the full list of names.)

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

# COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

#### NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

#### I. The Parties to This Complaint

#### A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name
All other names by which
you have been known:

ID Number

Current Institution
Address

Description

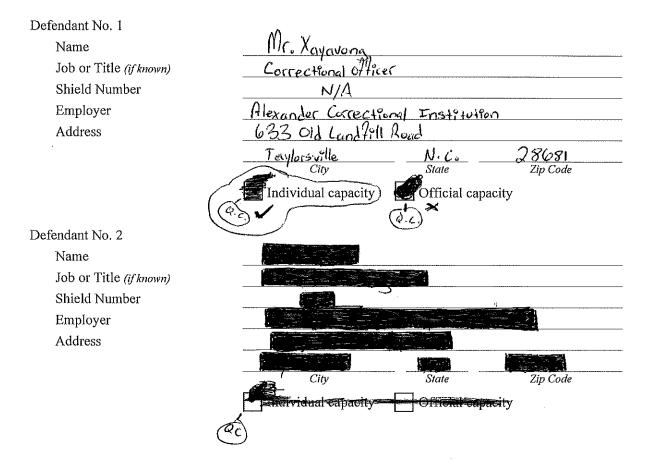
Address

City

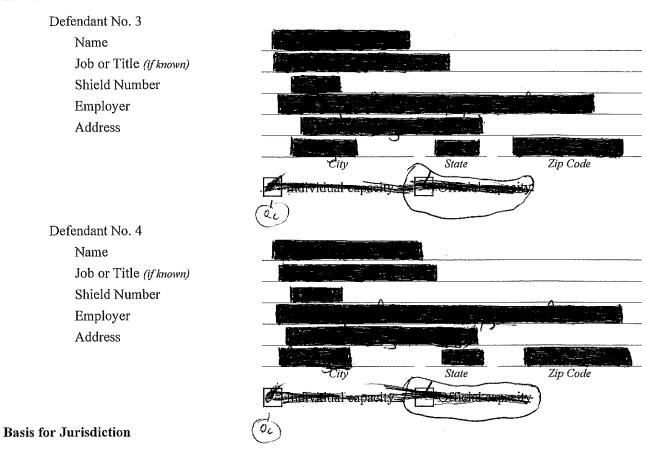
All other names by which
All other Description
Boy All other Description
All other names by which
All

#### B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.



Π.



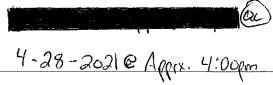
Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A.	Are you bringing suit against (check all that apply):
	Federal officials (a Bivens claim)
	State or local officials (a § 1983 claim)
В.	Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?
	Eigth Amendment Violation of U.S. Constitution

C. Plaintiffs suing under Bivens may only recover for the violation of certain constitutional rights. If you are suing under Bivens, what constitutional right(s) do you claim is/are being violated by federal officials?

	N/A
D.	Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under <i>Bivens</i> , explain how each defendant acted under color of federal law. Attach additional pages if needed.
	See: Attachment # 1
. Pris	oner Status
Indi	cate whether you are a prisoner or other confined person as follows (check all that apply):
	Pretrial detainee
	Civilly committed detainee
	Immigration detainee
V	Convicted and sentenced state prisoner
	Convicted and sentenced federal prisoner
	Other (explain)
. State	ment of Claim
allege furthe any c	as briefly as possible the facts of your case. Describe how each defendant was personally involved in the ed wrongful action, along with the dates and locations of all relevant events. You may wish to include or details such as the names of other persons involved in the events giving rise to your claims. Do not cite ases or statutes. If more than one claim is asserted, number each claim and write a short and plain nent of each claim in a separate paragraph. Attach additional pages if needed.
A.	If the events giving rise to your claim arose outside an institution, describe where and when they arose.
	N/A
В.	If the events giving rise to your claim arose in an institution, describe where and when they arose.

C. What date and approximate time did the events giving rise to your claim(s) occur?



D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

See	0	(-) +	tachment	#	2
		<u> </u>	1000 4 11 1 10 111		<i>~</i>

## V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

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	/ I Luch Herr	-

#### VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

See: Attachment # 4

#### VII. **Exhaustion of Administrative Remedies Administrative Procedures**

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?
Yes
☐ No
If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).
Alexander Correctional Institution
Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?
Yes
☐ No
Do not know
Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?
Yes
No
Do not know

Yes	
☐ No	
If no, did you file a grievance about the events described in this complaint at an other correctional facility?	y other jail, prison, or
Yes	
☐ No	
×1•	
E. If you did file a grievance:	
1. Where did you file the grievance?	
Alexander Correctional Institution	
2. What did you claim in your grievance?	
A	`
That Officer Xayavong Used Excessive Force On M	De
3. What was the result, if any?	
They Said It was being Investigated, let Never Gal M	My Statement For The Investig
4. What steps, if any, did you take to appeal that decision? Is the grievance process.	
not, explain why not. (Describe all efforts to appeal to the highest level of	
I Appealed Every Decision Until The Procedure was 6	Exhausted.

F.	Ify	ou did not file a grievance:
	1.	If there are any reasons why you did not file a grievance, state them here:
	2.	If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:
G.		ase set forth any additional information that is relevant to the exhaustion of your administrative edies.
		Re: Attached Grievance(s) And Response(s).
	(No	te: You may attach as exhibits to this complaint any documents related to the exhaustion of your ninistrative remedies.)
Previou	s La	wsuits
the filing brought maliciou	g fee an ao is, or	rikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, etion or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, fails to state a claim upon which relief may be granted, unless the prisoner is under imminent ious physical injury." 28 U.S.C. § 1915(g).
To the b	est o	f your knowledge, have you had a case dismissed based on this "three strikes rule"?
Yes	<b>3</b>	
No No		
If yes, s	tate v	which court dismissed your case, when this occurred, and attach a copy of the order if possible.
****		

VIII.

A.	Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?				
	Yes				
	☐ No				
В.	If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)				
	1. Parties to the previous lawsuit				
	Plaintiff(s) Quamaine D. Carmichael				
	Defendant(s) Dr. Murphy , Mr. O. Cothron , Mr. H. Corpening.				
	2. Court (if federal court, name the district; if state court, name the county and State)				
	U.S. District Court, Western District of N.C., Asheville Division.				
	3. Docket or index number				
	1:20-cv-00126-MR				
	4. Name of Judge assigned to your case				
	District Judge Martin Reidinger				
	J3				
	5. Approximate date of filing lawsuit  5 - 12 - 2020				
	6. Is the case still pending?				
	Yes				
	☐ No				
	If no, give the approximate date of disposition.				
	7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)				
C.	Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?				

Pro Se 14 (Rev. 12/1	6) Complaint for Violation of Civil Rights (Prisoner)
	Yes
	□ No
D.	If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)
	1. Parties to the previous lawsuit  Plaintiff(s) Quamaine D. Carmichael  Defendant(s) N.C. Dept. A Public Salety, Div. of Prisons, et al.
	2. Court (if federal court, name the district; if state court, name the county and State)
	(State Tortalism) N.C. Industrial Cummission
	3. Docket or index number  TA - 28152
	4. Name of Judge assigned to your case
	Deputy Commissioner Thomas H. Perlungher  5. Approximate date of filing lawsuit
	Dec. 2nd, 2019
	6. Is the case still pending?
	Yes
	No
	If no, give the approximate date of disposition
	7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)
	Case Is currently Appealed As Judgemen was Not In My Favor.

# IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

## A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case—related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Signature of Plaintiff	Quamaine Carmicha	reboel	
Printed Name of Plaintiff	Quamaine Carmiche	iel	
Prison Identification #	1212263		
Prison Address	Granville Correctional Inst., P.O. Box 2500		
	Briner	NC	27500
	City	State	Zip Code
For Attorneys			
Date of signing:	1 Washington and the second and the		
Signature of Attorney			
Printed Name of Attorney			
Bar Number			
Name of Law Firm		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	
Address			
			7: 0 1
	City	State	Zip Code
Telephone Number	City	State	Zip Cod